

Before the
Federal Communications Commission
Washington, DC

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Federal Communications Commission
Office of Secretary

In the Matter of) MM Docket No. 87-268
)
Advanced Television Systems and Their)
Impact upon the Existing)
Television Broadcast Service)

To: The Commission

COMMENTS OF KENTUCKIANA BROADCASTING, INC.

Kentuckiana Broadcasting, Inc., licensee of Station WFTE(TV), Salem, Indiana, by its attorney, submits its comments with respect to the above-referenced proceeding. With respect thereto, the following is stated:

1. The entire Digital Television ("DTV") proceeding has been the subject of much debate. While there seems to be no question that DTV should be implemented within a timetable that will make utilization of the technology reasonably accessible to the public, the methodology and precise spectrum that should be assigned, and specifically what channels and what assumptions should be used in assigning the channels, all must still be thoroughly studied in order to assure that there is no inadvertent harm inflicted on existing broadcasters or the public.

2. In this vein, there remain a number of issues that still should be seriously considered by the Commission. In summary, Kentuckiana believes that in order to finally place all broadcasters on a level playing field, Channels 14-69 should be used for DTV. Second, regardless of what channels are assigned for DTV use, a careful examination must be made of the permissible power level that can be utilized, to ensure that existing *predicted* service areas are replicated; with this issue in mind, existing VHF stations should be allowed the same

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maximum service areas as existing UHF stations, and mere *propagation* characteristics of existing VHF assignments should not be given overriding consideration. Third, the realities and difficulties of finding new site location from which to operate should be taken into account in assigning new allotments. Finally, the schedule to implement DTV should be reexamined to take into account market realities and the time it may take for DTV to become widely accepted.

DTV Service Should Be Placed Entirely in the UHF Band

3. With respect to the first issue, current UHF stations are permitted to operate at powers greater than VHF stations in order to offset the propagation characteristics differences between the two bands. Nevertheless, due to the nature of television broadcasting, the reality of the matter is that VHF stations currently are more easily received by the viewer than are UHF stations. This fact, coupled with the fact that operations on the VHF band began before UHF service was implemented and early television could not receive UHF stations, have resulted in increased viewership for VHF stations, which is one "UHF disadvantage." While a certain portion of this "UHF disadvantage" has been mitigated by the passage of the 1992 Cable Act. (whereby *all* stations, including stations that were UHF stations with low viewership, all are equally carried on local cable television systems), that legislation does not include "wireless cable" and Direct Satellite Systems, and also, the must-carry aspects of the legislation is under intense attack at the Supreme Court, and may not survive challenge.

4. Another "UHF disadvantage" has been the consequence of being granted the right by the FCC to operate at higher power, namely the higher power bills (and thus, greater cost of operation) that UHF stations broadcasters had to endure.

5. Finally, from a regulatory standpoint, there also has been a "UHF disadvantage."

Time and time again, the FCC has had to take into account and consider waivers or rule exceptions due to the existence of the disadvantages of operation on the UHF band, such as the number to be regarded as the number of households a station can reach in determining whether a group owner exceed the "national audience reach" contained in Section 73.3555(d)(3).

6. The FCC finally has the opportunity eventually to erase this "UHF disadvantage" in this DTV proceeding. By placing all DTV channels in the Channel 14-69 channel block, as conversion to DTV occurs over the next two decades, "VHF" stations as a separate entity no longer will need to exist. Moreover, if such a premise is adopted, the distinctions between older "established" stations finally could be erased, all stations could be dealing with similar propagation characteristics and utility cost considerations. All of these factors will result in an overall stronger local television system.

Problems With Regard to Establishment of New Transmitter Locations

7. Another matter of concern to Kentuckiana with respect to the current allotment plan is the consideration that is being given by the Commission to the possibility that some stations may need to establish new transmitter locations from which to operate beginning with the "transition" period in order to allow DTV to be implemented. Specifically, from a theoretical standpoint, a relocation of up to three miles, as the Commission is contemplating allowing, may appear to be of little consequence to the Commission. In reality, as the Commission may *not* know, finding a new transmitter site sometimes is a problem of major dimensions. First, current operations often are located existing antenna farms, which often have signification advantages from an air hazard perspective, and also offer advantages with regard to power availability, zoning, rent structure, and accessibility. Stations having to locate another, additional site in order

to engage in implementation of DTV may require stations to abandon locations, leases, and relationships that they have spent *decades* cultivating.

8. Specifically, the Commission should recognize that local zoning regulations may present a significant problem for DTV implementation. This is not only due to the aesthetic impact towers have to neighborhoods or to the overall scenic view of an area, but also due to local zoning officials' ongoing concerns concerning the safety of towers, *e.g.*, safeguarding their citizens from exposure to dangerous RF radiation, or from hazards in the event towers were to fall. Moreover, due to the large size of the towers that will often be necessary for DTV implementation, the FCC will not be able simply to "pre-empt" local zoning control over these matters, as it was able to do in the case of small Direct Satellite System dishes. Thus, local zoning considerations may play a major role in the implementation of DTV. The FCC must ensure that any DTV implementation schedule takes into account delays that may be caused by local regulatory authorities.

9. Additionally, as alluded to above, another consideration inadequately addressed at this time is the question of whether adequate power is available at the locations from which stations may have to relocate. As the Commission must realize, local utilities and rural electrical co-operatives often require significant lead time within which supply power lines and/or to alter their power grid supplies in a manner sufficient to accommodate the power needs for DTV transmitters. Also, as noted above, many stations (*i.e.*, VHF stations), if commencing television operation for the first time on the UHF band, will have *new*, increased, power demands, even if operating from their current locations, and further, since ATV and DTV stations will initially be operating *simultaneously*, in some areas, power needs will more than *double*. Again, the

implementation schedule must take into account the time that may be necessary to arrange for the power that may be necessary to implement DTV.

10. Finally, another topic that must always be revisited is the topic of the financial burden implementation of DTV will place on the local broadcaster. The Sixth Notice often appears to assume that channel changes will be accomplished easily, and without significant disruption to the viewing public. The reality of the situation is that DTV implementation will require significant capital investment by local broadcasters without initial guaranteed return of their investment, insofar as it is unknown exactly how quickly the public will embrace the new technology through the purchase of DTV receivers. One solution will be for stations actively to promote the availability of the new service. However, even promotional activities potentially will cost tens of thousands of dollars. Stations, of course, do not have unlimited funding, and unless careful consideration is given to the DTV implementation schedule, the DTV conversion process could have devastating effects on stations' public service capabilities.

New DTV Service Areas

11. At the present time, the limits of *predicted* Grade B service is used to convey certain rights to television broadcasters; predicted Grade B service determines, for example, the areas within which fill-in booster television stations can be established, and also determines (in a broad sense) those areas in which "must-carry" cable television rights will be protected.¹ Nevertheless,

¹ Under the Commission's Rules, requests for modifications of Areas of Dominant Influence ("ADI") generally are rejected as long as a station places at least a predicted Grade B signal over a cable system's community. Report and Order in MM Docket No. 92-259, 8 FCC Rcd 2965, 2981 (1993). "Grade B service demonstrates service to cable communities and serves as a measure of a station's natural economic market." Rivkin/Naragansett South Florida, CATV Limited Partnership, DA 96-2016 n.59 (Chief, Cable Services Bur. 1996). "We believe that television stations actually do or logically can rely on the area within Grade B contours for

the Commission's allotment plan contemplates only replicating existing station's service areas as computed using the "Longley-Rice" method of service prediction, which takes existing terrain into account. The end result of utilizing this methodology is that certain existing stations may lose the rights they currently have to provide service to their *entire* Grade B contour as currently predicted under standard prediction methods, and thereby will lose the right to provide service to that entire area in situations where the DTV Grade B service area (as predicted by standard prediction methods) is actually smaller than the station's current Grade B service area (as also predicted by standard prediction methods). These changes could cause existing broadcasters to lose their current rights to make their *actual* service coterminous with their *current predicted-Grade-B* service through the establishment of TV booster stations to "fill-in" gaps within their *current-Grade-B* areas which are blocked by mountainous terrain in those cases where the *new* DTV Grade B contour does not match with the *former* ATV predicted Grade B contour -- the net result will be that the area within which the broadcaster will be permitted to provide service will be *reduced*. Similarly, if the predicted Grade B contour of the DTV allotment goes less far than the current ATV predicted Grade B contour, this will cause ADIs (as determined under the Commission's cable television ADI modification rules (47 C.F.R. § 76.59)) to which some stations are entitled under current policies² to shrink, thereby causing such stations eventually to lose protection under the Commission's "must-carry" rules³ -- here, again, the net result will

economic support." Amendment of Section 76.51 (Orlando-Daytona-Melbourne, and Cocoa, Florida, 57 R.R.2d 685, 690 ¶ 14 (1985).

² See footnote 1.

³ If the Commission alters a station's ADI to eliminate a community from the station's ADI, the cable system no longer is required to carry the station under the Commission's must-carry rules.

be that the area within which the broadcaster will be permitted to provide service will be *reduced*.

12. For this reason, it is not enough that the FCC replicate existing service areas using the Longley-Rice terrain sensitive model. Broadcasters currently are permitted to provide service to the entirety of their *existing* predicted Grade B contour. The area within which those rights can be exercised should not be reduced due to the implementation of DTV. As the FCC has noted, even in cases where there are areas where reception currently is difficult due to terrain obstacles (as would be taken into account using the Longley-Rice prediction method), "[t]his, however, does negate the fact that [such] communities are within the area [such] stations have been licensed to serve." Ventura County Cablevision, 1 Comm. Reg. 161, 169 n.27 (Cable Bur. 1995). That licensed area should not be arbitrarily, unilaterally, or inadvertently, reduced.

13. Therefore, although the Commission currently is able to assert its belief that 95-100% of existing service areas will be replicated, this data may be misleading. In actuality, additional service areas that broadcasters may already be providing service to or else *have the right to* provide service to in the future, may not be replicated in the FCC's current allotment model. For this reason, additional data should be provided by the FCC concerning the extent to which Grade B service entitlements will change under its allotment plan, and the Commission should clarify the extent to which broadcasters will continue to have rights to provide service to *all* areas within their station's current Grade B service areas even after full implementation of the DTV Plan. There already will be great costs that will have to be borne by broadcasters for the equipment and promotion necessary to implement DTV. They also should not have to be faced with smaller permitted service areas as a result of the implementation.

Channel Labelling

14. With respect to channel labelling, the Commission proposes a number of proposals the differentiate DTV from ATV allotments. Sixth Report and Order at ¶ 78. Kentuckiana supports the plan by which each current allotment that would be entitled to be used as a DTV allotment would include the letter "D".

WHEREFORE, it is respectfully requested that these Comments be considered in conjunction with the matter being reviewed in this proceeding.

Respectfully requested,

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